

EXHIBIT 121

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,	:	
	:	
PLAINTIFFS,	:	
vs.	:	DOCKET NUMBER
	:	1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL.,	:	
	:	
DEFENDANTS.	:	

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION VIA ZOOM

PROCEEDINGS

BEFORE THE HONORABLE AMY TOTENBERG

UNITED STATES DISTRICT JUDGE

SEPTEMBER 14, 2020

9:32 A.M.

VOLUME 3

REDACTED

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

TRANSCRIPT PRODUCED BY:

OFFICIAL COURT REPORTER:	SHANNON R. WELCH, RMR, CRR
	2394 UNITED STATES COURTHOUSE
	75 TED TURNER DRIVE, SOUTHWEST
	ATLANTA, GEORGIA 30303
	(404) 215-1383

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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BY MS. ASCARRUNZ:

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MS. ASCARRUNZ: [REDACTED]

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MR. TYSON: [REDACTED]
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THE COURT:

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1 think it doesn't -- it does not match my understanding of what
2 the statute was that we just looked at. And it also is, again,
3 defining the scope of testing such that we are not asking all
4 the questions to all the machines all the time.

5 **Q.** And if this is the -- if this is the procedure which BMDs
6 and their printers are actually tested under, do you have an
7 opinion on the significance of the difference between this
8 procedure and what the statute requires for purposes of the
9 security of the system?

10 MR. TYSON: I'll object to the extent this assumes
11 that there is a distinction between those two, but I understand
12 Mr. McGuire's question.

13 THE COURT: Go ahead and proceed.

14 **A.** I'm sorry. Could you ask the question again.

15 **Q. (BY MR. MCGUIRE)** Yeah. I may not be able to ask it in
16 exactly the same words. But, you know, to the extent that you
17 understand this procedure that we're looking at, this D,
18 testing of the BMD and printer, do you have an opinion on the
19 significance of the departure between this document, these
20 procedures, and what you understood the statute to require?
21 Does it matter?

22 MR. TYSON: (Unintelligible). Sorry.

23 **A.** Yes, I think it does matter. Not just in a legal sense.
24 But in a technical sense, I think it matters. And there is a
25 good recent example of that. In Northhampton County,

1 Pennsylvania, where I reside -- in the state I reside, in
2 November of last year, there was some poor configuration of the
3 ballot-marking devices that is a ballot marker and tabulator
4 all in one. And the configuration problem -- the systems were
5 not adequately logic and accuracy tested. So those
6 configuration problems weren't caught. And the result is that
7 there were some contests on election night that had correct
8 tallies and other contests where the candidate that was
9 eventually the winner got zero votes.

10 And so not only was it, you know, a big fiasco to sort of
11 sort out, but the public's trust in the election was really
12 damaged. Thankfully this failure was on a machine with paper
13 and the error was on the side of the tabulation of that paper.
14 So the paper could be rescanned.

15 But if the error had been in the ballot-printing portion,
16 as Dr. Stark has testified about is a concern, it would not
17 have been able to correct those results.

18 **Q. (BY MR. McGUIRE)** And by that, you mean using this
19 procedure versus the one in the statute?

20 **A.** That's right. If you don't catch the problems in the BMD
21 and ask yourself if every BMD is operating properly, then you
22 open yourself up to having results that you can't detect are
23 wrong.

24 **Q.** The example you just gave in Northhampton, Pennsylvania,
25 was of a misconfiguration of the BMDs. Would your conclusion

1 And I actually recommend usually that we go a step further
2 even than the statute does and test the audio ballot that is
3 used by voters who are blind to ensure that there is no errors
4 there because you wouldn't want those to be crisscrossed. And
5 the same for language -- for ballot marking in other languages.
6 There is a lot of testing that goes into these ballot-marking
7 devices to make sure that the technology is going to behave
8 correctly on election day.

9 **Q.** So when you say crisscross, you mean that I voted for
10 George Washington but it is recorded as Thomas Jefferson?

11 **A.** Correct. Let's say that I followed a logic and accuracy
12 procedure. So I cast one vote for George Washington, and I
13 printed on the ballot-marking device, and I run it through the
14 tabulator. Then I do another one for Thomas Jefferson and do
15 the same thing.

16 Now I have one vote for each. So when I look at the final
17 results, I expect to see one vote for each. But how do I know
18 that they didn't get swapped? How do I know that it correctly
19 attributed them?

20 So usually what you would do is give two votes for George
21 Washington and one vote for Thomas Jefferson. That way in the
22 end results you can see each candidate was capable of receiving
23 a vote and they were correctly attributed.

24 **Q.** What, if any, issues do you see if you are only testing
25 for one candidate's race per machine?

1 **A.** Then if you are thoroughly testing that candidate's race,
2 then you can feel good that that candidate's race is not going
3 to have problems. You cannot make any assertions about any
4 other race on the ballot.

5 It is similar to the problems with the risk-limiting
6 audits that we talked about. If you are only auditing one
7 race, you are only going to detect problems in one race.

8 Once you test, the scope of your testing determines
9 whether you will find the problems. If you don't look, you
10 can't find them.

11 **Q.** Well, if I -- I mean, this is structured right now so that
12 I have, let's say, five machines. I test machine Number 1 on
13 the presidential race and the next one, machine Number 2, on
14 senate race number A or letter number A.

15 Does the fact that I've been able to test the presidential
16 race on the first machine tell me anything about the
17 functioning and -- internal functioning and accuracy of machine
18 number B that I'm testing for the senate race?

19 **A.** It does not. It does not. And you can make -- you can
20 make an assumption or use that to think that maybe it should be
21 right. But you have not tested it. So you don't know.

22 **Q.** And I mean, each of these are independent basically
23 computers; is that right?

24 **A.** That's correct.

25 **Q.** All right. And with respect to the unique ballot style,

1 what is the issue in your mind specifically about why each
2 ballot style should be tested on each BMD? I know it provides
3 that they don't have to be. But why in your view --

4 **A.** Ballot style is a separate discrete unit. So an example
5 is in a primary you might have a ballot style for the
6 republicans and a ballot style for the democrats. Those are
7 two separate styles.

8 In some -- some polling places, you may have, you know,
9 school board elections that are different on one ballot and not
10 on the other. Whereas, everything else on the ballot is
11 potentially the same.

12 I think you need to check both of those because the ballot
13 itself is not just the change to the bottom of it. There's all
14 sorts of other information that is there as well.

15 **Q.** You mean the races. But does it also affect in terms of
16 what is being tested on a logic and accuracy how it -- how the
17 computer computes and how it records the information?

18 **A.** I'm sorry. Could you ask that one more time.

19 **Q.** I'm just trying to understand. Is the logic and accuracy
20 testing regarding how the computer computes that particular
21 race and also where it locates the information?

22 **A.** Yes. So on the ballot-marking device, you are testing
23 that it marks a ballot correctly; that whatever you do on the
24 screen is reflected in what is output on paper at the end.

25 On a tabulator, you're validating that when you take the

1 input of the ballot into the tabulator that the totals that
2 come out at the end match correctly. In both cases, you are
3 looking to see if what goes in gives you what you expect to
4 come out on the other side.

5 **Q.** And I guess from your perspective -- and I know I have
6 asked this in different ways. But I want to just make sure.

7 What you perceive as the problem about just testing one
8 race is it doesn't yield information about how the computer
9 handles the full range of the ballot?

10 **A.** That is correct. It is not testing that each of these
11 machines is behaving properly on all of these contests. So if
12 you -- if we sort of give a hypothetical example, let's say
13 that there was a contest where we found that one ballot
14 style -- the school board race at the bottom was computed
15 correctly but on another ballot style it wasn't. And we asked
16 ourselves afterwards, well, why didn't we detect that? Why
17 didn't we find that there was this problem in this one race?
18 And it is not just hypothetical. That is actually what
19 happened in the example I gave in Northhampton County.

20 There was some races that worked perfectly fine. Their
21 totals were exactly right. If you had looked at that race,
22 there was no problem. But then there were other contests where
23 something that was a little bit different about those contests
24 and the way that it was set up caused a problem so that some
25 candidates got zero votes -- where winning candidates got zero

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 198 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 15th day of September, 2020.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT